

STATE OF MICHIGAN
COURT OF APPEALS

DAVID H. ZINNBAUER,

Plaintiff-Appellant,

v

COLEMAN SUPPLY COMPANY,
TRANSCONTINENTAL INSURANCE
COMPANY, and THE ACCIDENT FUND
COMPANY,

Defendants-Appellees.

UNPUBLISHED
September 5, 1997

No. 190549
WCAC
LC No. 92-0998

Before: Saad, P.J., and Neff and Jansen, JJ.

PER CURIAM.

The sole issue presented in this workers compensation case is whether the Worker's Compensation Appellate Commission applied the correct definition of "disability" in reversing the magistrate's grant of benefits. We find that it did not and reverse.

I

Plaintiff worked for defendant primarily as a warehouseman and as a truck driver. He suffered heart attacks in the course of his employment in 1987 and 1990. The magistrate found that both heart attacks were work related. After each heart attack, plaintiff's physician released him to return to work with a fifty pound lifting restriction. After the second heart attack defendant issued a letter indicating that plaintiff would not be accepted for employment because of the fifty pound lifting restriction, explaining that the company "could not accommodate this restriction."

However, defendant later recalled plaintiff to work, only to lay him off a few months later. After the layoff, plaintiff looked for work unsuccessfully. He was fifty-five years old. He testified that he could perform the job from which he was laid off and another job he had performed working on a paint line.

The magistrate found plaintiff credible and disabled, recognizing that there were some jobs he was capable of performing but that he had not been able to find any employer which would hire him. The magistrate concluded that there was a limitation in plaintiff's wage earning capacity in work suitable to his qualifications and training as a result of his cardiac status and the weight-lifting restriction imposed by his treating physician.

The WCAC initially reversed, based on a definition of disability keyed to whether there is *any* employment a claimant is capable of performing. This court reversed peremptorily and remanded for further consideration, in light of the definition of disability articulated in *Rea v Regency Olds*, 204 Mich App 516; 517 NW2d 251 (1994).¹ *Zinnbauer v Coleman Supply Co*, unpublished order of the Court of Appeals, entered 9-12-94 (Docket No.174941). While this case was on remand to the WCAC our Supreme Court decided *Michales v Morton Salt Co*, 450 Mich 479; 538 NW2d 11 (1995) and remanded *Rea* for additional findings. 450 Mich 1201; 536 NW2d 542 (1995). Interpreting *Michales*, *Rea*, and *Sobotka v Chrysler Corp*, 447 Mich 1; 523 NW2d 454 (1994), the WCAC again found that plaintiff was not disabled because there were jobs he was capable of performing. We granted plaintiff's application for leave to appeal the determination of the WCAC with regard to the appropriate definition of "disability".

II

The meaning of "disability" in the context of worker's compensation law has long been a subject of controversy. The most recent pronouncement of our Supreme Court on the issue clearly rejects the definition of the term applied by the WCAC in this case. *Haske v Transport Leasing*, ___ Mich ___; ___ NW2d ___ (issued 7-30-97, Docket No. 102444).

In this case the evidence shows that plaintiff suffered work-related heart attacks and the resultant requirement that he not lift more than fifty pounds disabled him from his employment with defendant. This was acknowledged in the letter from defendant indicating that plaintiff's lifting restriction could not be accommodated. The evidence further shows that plaintiff could not find another job, in spite of extensive efforts to do so.

This evidence satisfies plaintiff's burden of proof of compensable disability within the definition of the term set out in *Haske*. Specifically, he has shown that (1) he can no longer perform a job suitable to his qualifications and training as a result of his injury, (2) he has wage loss due to reduction in earning capacity, and (3) the reduction or elimination of his wages is causally linked to his work-related injury. *Id.* at ___ (Slip op at 34).

Reversed and remanded for reinstatement of the magistrate's award of full benefits under MCL 418.301(5)(e); MSA 17.237(301)(5)(e). We do not retain jurisdiction. Plaintiff being the prevailing party may tax costs pursuant to MCR 7.219.

/s/ Henry William Saad

/s/ Janet T. Neff

/s/ Kathleen Jansen

¹ “[A]n employee is ‘disabled,’ . . . if the employee suffers from any limitation in wage-earning capacity in work suitable to the employee’s qualifications and training.” *Rea, supra* at 523.